

Applicant : Rolia et al.
Patent No. : n/a
Issued : n/a
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REMARKS

In the present Office Action, the Examiner objected to Claim 27 under 35 U.S.C. 101 because "the claim lacked necessary physical articles or objects to constitute a machine." Applicants respectfully submit that Claim 27 is statutorily allowed as defined under 35 U.S.C. 112 ¶ 6. Under 35 U.S.C. 112, an element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. Warner-Jenkinson Co., Inc. v. Hilton Davis Chemical Co., 520 U.S. 17, 28 (1997).

In this case, FIG. 3 depicts a computer system capable of performing at least the operations specified in Claim 27. Likewise, the specification describes modules of the present invention as implemented in a computer system. For at least these reasons, the Applicants respectfully submit that the rejection of Claim 27 under 35 U.S.C. 101 must be withdrawn.

Further, the Examiner rejected Claims 2-7 and 15-20 under 35 U.S.C. 112 ¶ 1 as failing to comply with the enablement requirement. Specifically, the Examiner indicates that "the act of unfolding in claim 2 is not supported by the specification". Applicants respectfully disagree with the Examiner's conclusion and also request withdrawing this rejection. For example, paragraphs [0041] and [0042] state :

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[0041] Initially, implementations of the present invention unfold regular and caveat demand time slots from the submitted demand profiles onto a staging calendar (502). Regular time slots generally reoccur on a relatively short time frame while caveat demand time slots occur over much longer periods of times. For example, one set of demand time slots used by an application may repeat during the week while another set of demand time slots occur with a certain demand on the weekends.

[0042] Both the regular and caveat time slots are unfolded and placed on a staging calendar to determine the ability of the computing utility facility to provide the required resources for the application (504). Resource pools associated with the computing utility facility are probed to determine if the request made by an application can be fulfilled.

Clearly, aspects of the present invention are enabled especially when paragraphs [0041] and [0042] are considered along with a demand profile A 202, a demand profile B 204 and a caveat demand profile 206 from FIG. 2. One skilled in the art would reasonable understand the term “unfolding” to indicate that the demand profiles are used to make repeated reservations on a calendar at different time intervals or periods of time. For example, a demand profile specifying the use of resources on Monday from 8:00 to 3:00 would be reserved and unfolded on each Monday thereafter. No new matter is added by way of this clarification of the invention as described.

Accordingly, Applicants respectfully request withdrawing the rejections associated with 35 U.S.C. 112 ¶ 1.

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Further, claims 1-2, 6-12, 14-15, 19-25, and 27 were rejected under 35 U.S.C § 102(b) as being anticipated by Rottoo (U.S. Patent 5,933,417).

However, Applicants respectfully submit that the Examiner has failed to establish the prima facie case as each and every element of independent claim 1 is not taught by Rottoo. See *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2D (BNA) 1913, 1920 (Fed. Cir.), cert. denied, 493 U.S. 853, 107 L. Ed. 2d 112, 110 S. Ct. 154 (1989) (explaining that an invention is anticipated if every element of the claimed invention, including all claim limitations, is shown in a single prior art reference). See *Jamesbury Corp. v. Litton Industrial Products, Inc.*, 756 F.2d 1556, 1560, 225 USPQ 253, 256 (Fed. Cir. 1985) (explaining that the identical invention must be shown in as complete detail as is contained in the patent claim). See *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2D (BNA) 1051, 1053 (Fed. Cir. 1987) (explaining that a prior art reference anticipates a claim only if the reference discloses, either expressly or inherently, every limitation of the claim). See *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 U.S.P.Q. (BNA) 81, 84 (Fed. Cir. 1986) ("Absence from the reference of any claimed element negates anticipation.")

Rottoo concerns a reservation system that reserves access to different communication ports on one or more multipoint multimedia servers or MMSs to users at a future predetermined time

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interval. (Abstract, Col. 2, lines 6-19) The MMS is a specialized telecommunication device that switches video from one input port to an output port and vice-versa to allow sharing of different multimedia equipment. (Col. 7, lines 30-49; Col. 4, lines 21-29) Essentially, the MMS is a dedicated switching device that delivers video or audio from a multimedia device to a display or audio output device. A typical MMS may have 32 such ports that provide multimedia switching capabilities for different types of media including VCRs. (*Id.*)

Users request use of a VCR or other multimedia device along with ports on the MMS switch in advance by way of a reservation stored in a resource availability matrix or database. (Abstract). The system handling the reservations is a separate entity identified in Rottoo as a "reservation controller". (Col. 4, lines 6-10) The user's request indicates to the reservation controller if a multimedia resource or port on the MMS is required or flexible (i.e., optional) and also specifies several preferred time slots for using the resources. (Col. 5, lines 15-22; Col. 7, lines 29-49). Based on the request, the reservation controller checks the resource availability matrix or database to determine if the multimedia resources or ports on the MMS are available in one or more time slots matching the request. (Col. 7, lines 50-52; Col. 8, lines 54-57; Col. 10, lines 60-65). Eventually, the reservation controller presents a response listing time periods to the user or persons that made the

request including the requested resources or, in some cases, more resources than requested and whether the resources are available or taken. (Col. 14, lines 3-10)

However, it is up to the user in Rotttoo to make a decision once the response is created. If the user chooses to book a reservation then the reservation controller updates the resource availability matrix or database to indicate the ports on the MMS and requested multimedia devices are unavailable at the time slot in the future. (Col. 14, lines 48-59). Alternatively, the user may choose not to book a reservation if they do not like the time slots offering the ports on the MMS and requested multimedia devices. (*Id.*) Of course, the user cannot book a reservation if the requested resources exist but are already booked and not available. In the former situation, it is also up to the user or users to login and use the reserved ports on the MMS and multimedia devices at the specified time period. (Col. 2, lines 25-28). Once Rotttoo reserves the ports, there are no applications assigned to use the ports and nothing in Rotttoo makes sure the ports are used at the specified time period.

Applicants respectfully submit that Rotttoo does not teach or suggest, "A method of governing access to resources in a computing utility facility" and "receiving a demand profile associated with an application that identifies the resources required from a pool of resources during one or more demand cycles" as recited in claim 1. Rotttoo only concerns multimedia devices capable of playing video and a video switching device but not "a computing utility facility". In this context,

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Rottoo gives a user the option of using a multimedia device to pass video information over a reserved port on a switch. Nothing in Rottoo discusses an application or an application with an associated demand profile in a computing utility.

A query request from a user in Rottoo determines when resources are available; but this is not the same as a demand profile. First, a user in Rottoo submits a reservation query that effectively lists when certain resources are available. (Col. 14, lines 22-27 of Rottoo). Unfortunately, the 1st query in Rottoo does not also operate to select and start using the resources even if they are immediately available.

Instead, the 1st query in Rottoo merely produces a list of times that certain resources are available but requires a additional steps to actually select one of the available times. There is nothing in Rottoo that describes “demand profiles” as recited in Claim 1 or existence of even a functional equivalent. The user in Rottoo does not “demand” any resources in advance but creates a query to determine what is available. These are distinctly different concepts.

The query in Rottoo does not demand resources and does not result in identifying required resources. (Col. 4, lines 31-42; Col. 6, lines 27-32 of Rottoo) For example, the 1st query from the user in Rottoo results in a list of both available and unavailable resources. (Col. 5, lines 23-27) Clearly, the unavailable resources could not be required resources or the governing method would fail immediately. The result of a query in Rottoo may be of some utility but clearly is not a “demand

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profile” and does not necessarily identify required resources. For at least this reason, the query in Rottoo does not contain a “demand profile” as alleged by the Examiner.

Even if the query were a “demand profile”, which it is not, nothing in Rottoo teaches or suggests “a demand profile associated with an application” as recited in claim 1. According to Rottoo, the query is received by a user and therefore it cannot be received and associated with an application as well. (Col. 5, lines 5-8; Col. 3, lines 32-47, Col. 9, lines

Since there is no “demand profile” and no “application”, it also follows that Rottoo does not teach or suggest the limitation “identifies the resources required from a pool of resources during one or more demand cycles” as recited in claim 1. After a careful reading of Rottoo, there does not appear to be any teaching or suggestion of “one or more demand cycles”. Indeed, a user in Rottoo sends queries one at a time over a phone or computer and not according to any type of “demand cycle”. (Col. 2, lines 9-21; Col. 9, lines 39-54). For this additional reason, Rottoo does not anticipate claim 1 but rather claim 1 is in condition for allowance.

Further, Rottoo does not operate by “admitting an application to the computing utility facility if resources required for the application can be provided from the pool of resources in accordance with the demand profile” as also recited in claim 1. For reasons previously described, Rottoo only indicates those resources that are in-use and those resources that are not in-use or

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available. There is no application that Rottoo either admits or denies admission and as previously described, there are no one or more demand cycles described or suggested in the cited reference.

Finally, Rottoo does not teach or suggest the limitation "assigning available resources from the pool of resources in response to a request from the applications admitted to the computing utility facility" as recited in claim 1. Resources in Rottoo are ultimately assigned to a particular user thus making a reservation and the assignment is not in response to a request from any application. (Col. 14, lines 3-7; Col. 14, lines 22-27; Col. 14, lines 49-59)

Applicant respectfully submits if Examiner believes that Rottoo teaches each and every element of claim 1 that these limitations are pointed out with particularity. Otherwise, Applicant would respectfully request that the Examiner withdraw the rejection of claim 1 for failing the "all elements rule" required by 35 U.S.C § 102(b) and the MPEP. Dependent claims 2-13 are not only independently allowable but also in condition for allowance by virtue of their dependence on allowable independent claim 1.

Independent claims 14 and 27 are also not anticipated by Rottoo for at least the aforementioned reasons and should also be in condition for allowance. Further, dependant claims 15-26 are not only allowable on their own but also allowable by virtue of their dependency on allowable independent claim 14.

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Dependent claims 3, 4, 5, 16, 17 and 18 were also rejected under 35 U.S.C. 103(a) as being unpatentable over Rottoo in view of U.S. Patent No. 6,144,727 to Mashinsky (hereafter Mashinsky). Applicants respectfully submit that dependent claims 3, 4, 5, 16, 17 and 18 are not only independently allowable but also allowable by virtue of their direct or indirect dependence on allowable independent claims 1 and 14.

In summary, claims 1-27 remain in condition for allowance in light of Rottoo and/or Mashinsky. Applicants respectfully request reconsideration of the rejections presented and their withdrawal in view of their remarks provided hereinabove.

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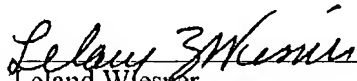
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Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Leland Wiesner, Applicants' Attorney at (650) 853-1113 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

Date 06/04/2008



Leland Wiesner
Attorney/Agent for Applicant(s)
Reg. No. 39424

Leland Wiesner, Attorney
Wiesner & Associates
366 Cambridge Avenue
Palo Alto, California 94306
Tel. (650) 853-1113